IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

1. S.B. CIVIL SECOND APPEAL NO.371 OF 2004.

Hargovind Sharma Vs. R.S.R.T.C. & Others

2. S.B. CIVIL SECOND APPEAL NO.378 OF 2004.

Hargovind Sharma Vs. R.S.R.T.C. & Others

DATE OF ORDER ::: 06.10.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. B.L. Gupta, Counsel for plaintiff-appellant.
Mr. Aladeen Khan, Counsel for defendant-respondents.

By the Court :

Heard learned counsel for both the parties.

These two appeals, under Section 100 of the Code of Civil Procedure, 1908, are directed against the common order dated 13.01.2003 passed by the Additional District Judge No.6, Jaipur City, Jaipur, therefore, these two appeals are being disposed of by this common order.

The plaintiff-appellant filed a suit for injunction in mandatory form, wherein it was pleaded that the plaintiff was selected/appointed on the post of Conductor vide order dated 14.03.1985, but he was not allowed to join his duty. Thereafter he gave representation but with no consequence and in these circumstances he filed a suit for mandatory injunction in the Court on 04.09.1989 to direct the defendant to allow the plaintiff to join his duty.

The defendant filed their written statements, wherein they pleaded that inspite of issuance of appointment order dated 14.03.1989 the plaintiff did not join his duty on the post of Conductor and the present suit has been filed on 04.09.1989 i.e., after four-and-half-years.

The Lower Court decreed the suit of the plaintiff and directed the defendants to give an appointment to the plaintiff on the post of Conductor within a period of one month. However, it was directed that the plaintiff will not be entitled to get any monetary benefits. Being aggrieved with the same, the plaintiff as well as the defendants, both preferred first appeal. The plaintiff was aggrieved with not

awarding the monetary benefits., whereas the defendant was aggrieved with the order to issue an appointment order to the plaintiff.

The First Appellate Court vide its judgment and decree dated 13.01.2003 dismissed the appeal of the plaintiff, but allowed the appeal of the defendants and ultimately dismissed the suit of the plaintiff for mandatory injunction. Hence, these two appeals have been preferred by the plaintiff.

Mr. Gupta, learned counsel for the plaintiff-appellant has argued the case at length and contended that he was prepared to join his duty, but he was not allowed to join his duty. He further contended that even if this case relates to the year, 1985 then he is not at fault as case remained pending in Court from 1989 onwards and in support of his contention, he referred Beg Raj Singh Vs. State of U.P., and Others, reported in **2003 (1) S.C.C. Page 726.**

Learned counsel for the defendant-respondents contended that the Issue No.2 was relevant in the present case as to whether the plaintiff joined his duty or not. He contended that this question is purely a question of fact and there is a finding of the First

Appellate Court in this regard against the plaintiff, which cannot be interfered with by this Court in second appeal under Section 100 of the C.P.C. He contended that even as per case of plaintiff, the suit was filed on 04.09.1989, whereas appointment order was issued on 14.03.1985 and no one will wait for more than four years to join duty or to file suit in this regard. He contended that the second appeal can be admitted only on substantial question of law, which is not involved in the present case.

I have considered the submissions of learned counsel for both the parties.

There was specific issue i.e. Issue No.2 framed in the present case and as per finding of First Appellate Court the plaintiff did not join his duty inspite of appointment order issued to him and for which he himself is at fault. This finding is purely a finding of fact by the First Appellate Court, which cannot be interfered with by this Court in second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in these second appeals and the same are accordingly dismissed at the admission stage itself with no order

as to costs.

(Narendra Kumar Jain) J.

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